

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SNMP RESEARCH, INC. and SNMP
RESEARCH INTERNATIONAL, INC.,

Plaintiffs,

v.

BROADCOM INC.; BROCADE
COMMUNICATIONS SYSTEMS LLC; and
EXTREME NETWORKS, INC.

Defendants.

Case No. 3:20-cv-00451

**EXHIBIT D IN SUPPORT OF DECLARATION OF ALISON PLESSMAN IN
SUPPORT OF BROADCOM INC. AND BROCADE COMMUNICATIONS SYSTEMS
LLC'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL
DISCOVERY, DETERMINE SUFFICIENCY OF REQUEST FOR ADMISSION
RESPONSES, AND FOR SANCTIONS AS TO DEFENDANTS BROADCOM INC. AND
BROCADE COMMUNICATIONS SYSTEMS LLC**

EXHIBIT D

3. The terms “You,” “Your,” and “Brocade” means Brocade Communications Systems LLC, its predecessors, predecessors-in-interest, successors, successors-in-interest, affiliated entities, including all divisions and subsidiaries, and the officers, directors, employees, agents, attorneys, accountants, and representatives, including all other Persons or entities acting or purporting to act on behalf of it.

4. The term “Broadcom” means Broadcom Inc., its predecessors, predecessors-in-interest, successors, successors-in-interest, affiliated entities, including all divisions and subsidiaries, and the officers, directors, employees, agents, attorneys, accountants, and representatives, including all other Persons or entities acting or purporting to act on behalf of it.

5. The term “Extreme” means Extreme Networks, Inc., its predecessors, predecessors-in-interest, successors, successors-in-interest, affiliated entities, including all divisions and subsidiaries, and the officers, directors, employees, agents, attorneys, accountants, and representatives, including all other Persons or entities acting or purporting to act on behalf of it.

6. The term “License Agreement” shall mean the License Agreement, dated March 10, 2001, as amended, between Brocade Communications Systems LLC and SNMP Research International, Inc.

7. The term “SNMP Research Software” means any of the following: (i) software provided by SNMP Research to Brocade, (ii) software licensed by SNMP Research to Brocade, or (iii) any software created by SNMP Research which is or was in the possession of Brocade. The foregoing categories include Source Code, compiled code, binary code, configuration files and data, associated documentation, and Derivative Works thereof.

8. “Source Code” means documents that reflect human-readable text written using a computer programming language that are nominally capable of being used to generate an executable software program.

9. The term “Derivative Work” means (i) any program or documentation in Source Code form or binary form which (A) has been or is developed by Brocade through the use of SNMP Research Software, or (B) includes any features, provisions, algorithms, or other portions of SNMP Research Software, or (ii) derivative works as defined in the Copyright Act.

10. “Communicate” or “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or other perceptible means, including, but not limited to, telephone conversations, letters, documents, memoranda, notes, telegrams, facsimile transmissions, electronic mail, meetings, and personal conversations.

11. The unqualified term “Person” shall mean an individual, corporation, firm, company, sole proprietorship, partnership, unincorporated association, business association, or governmental entity.

12. “Identify,” “Identifying,” or “Identity” means:

a. When used in reference to a Person, to state his/her full name, present or last known address, present or last known telephone number, present or last known email address, present or last known place of employment and position held, and place of employment and position held at the time period covered by these interrogatories.

b. When used in reference to a document, to state the date, author, type of document (e.g., letter, memorandum, photograph, telegram, tape recording, email, etc.); the Person or Persons to whom either copies of it were sent, received, or otherwise distributed and their addresses or email addresses; and the present or last known location and custodian of the original of the document and any copies thereof. If any such document was, but is no longer, in Your possession or custody or subject to Your control, state what disposition was made of it, the date, by whom, and at whose direction;

c. When used in reference to a Communication, to state the type of Communication (e.g., letter, personal conversation, meeting, email etc.), and whether the Communication was oral or in writing. If the Communication was oral, state the date of the Communication, the parties thereto, the place and approximate time thereof, the substance of what was said by each party, and the Identity of all other Persons present; if the Communication was written, produce the writing;

d. When used in reference to an act, fact, or event, to state the substance of the act or event, the date, time, and place of performance, and the Identity of the actor and/or all other Persons present;

e. When used in reference to an omission, to state the substance of the act which You contend should or would have been performed, the time and date when such act should or would have been performed, and the Person who should or would have performed such act.

13. The term “Product” means each item that can be or has at any time been able to be separately ordered or distributed or provided as an update to an existing Product, whether sold, leased, licensed, sublicensed, whether enabled or not, whether revenue bearing or not, including, but not limited to, hardware, software, services, or combinations of hardware, software, or services.

14. The term “Partner Product” means each Product of a third party that now, or has ever, whether in current distribution or not, contains, uses or is otherwise associated with SNMP Research Software either as manufactured or as a result of a software or firmware installation or update where the SNMP Research Software was obtained from Brocade by such third party.

15. “Relates to” and “Relating to” means evidences, supports, connects, constitutes, contains, records, discusses, summarizes, analyzes, discloses, and/or refers to, in whole or in part.

16. “And” and “or” each shall be construed either conjunctively or disjunctively as necessary to bring within the scope of these interrogatories any information or document that might otherwise be construed to be outside its scope.

17. References to the plural shall include the singular; references to the singular shall include the plural.

18. References to the feminine shall include the masculine; references to the masculine shall include the feminine.

19. The interrogatories below incorporate the above definitions without regard to the capitalization used in connection with the terms defined unless otherwise specified in each respective request.

INSTRUCTIONS

1. These following interrogatories shall be considered continuing, and You are to supplement Your answers in a timely manner in accordance with the requirements of Federal Rule of Civil Procedure 26.

2. If You contend that You are entitled to refuse to answer any of the interrogatories, or any part of any of the interrogatories, state the exact legal basis upon which You contend that You are entitled to not answer the interrogatory, or any part thereof.

3. Unless otherwise indicated, the time limits for each and every interrogatory and document request included herein are from January 1, 2017 to the present.

4. In their motion to dismiss, Brocade Communications Systems LLC and Broadcom Inc. represented that “Broadcom Inc. is a parent holding company and not a sales operating entity, and thus does not sell or engage in any Product development containing the software at issue in this case” Dkt. 40-1 at 10. In all interrogatories below which refer to Broadcom, the interrogatories seek information that includes Broadcom Inc. as well as any entity that Broadcom Inc., as a purported “holding company,” holds any interest, direct or indirect, and any company which Broadcom Inc. serves as a direct or indirect “parent.” When responding to any interrogatory in which a complete and truthful answer would encompass any such entity(ies), please include and Identify the entity(ies).

5. If You are unable to answer an interrogatory fully, submit as much information as is available and explain why Your answer is incomplete. If precise information cannot be supplied, submit:

a. Your best estimate or judgment, so identified, and state the source or basis of the estimate or judgment; or

b. Such information available to You as comes closest to providing the information requested.

c. If incomplete answers, estimates or judgments are submitted and You have reason to believe that other sources of more complete and accurate information exist, Identify those other sources of information.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify any and all entities to which Brocade Communications Systems, Inc. or Brocade Communications Systems LLC disclosed any portion of the Source Code that it received under the License Agreement.

INTERROGATORY NO. 2:

Identify any and all entities to which Brocade Communications Systems, Inc. or Brocade Communications Systems LLC disclosed Derivative Works of any portion of the Source Code that it received under the License Agreement.

Respectfully submitted this 2nd day of June, 2022.

By: /s/ John L. Wood
John L. Wood, Esq. (BPR #027642)
Cheryl G. Rice, Esq. (BPR #021145)
Rameen J. Nasrollahi, Esq. (BPR
#033458)
EGERTON, McAFEE,
ARMISTEAD & DAVIS, P.C.
900 S. Gay Street, Suite 1400
P.O. Box 2047
Knoxville, TN 37902
(865) 546-0500 (phone)
(865) 525-5293 (facsimile)
jwood@emlaw.com
crice@emlaw.com
rnasrollahi@emlaw.com

Morgan Chu (CA Bar. No. 70446)
David Nimmer (CA Bar. No. 97170)
A. Matthew Ashley (CA Bar. No.
198235)
Olivia L. Weber (CA Bar. No.
319918)
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
(310) 277-1010 (phone)
(310) 203-7199 (facsimile)
mchu@irell.com
dnimmer@irell.com
mashley@irell.com
oweber@irell.com

Attorneys for Plaintiffs

SNMP Research International, Inc.

SNMP Research, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of June, 2022, a true and accurate copy of the foregoing was served on counsel of record for all Defendants in this matter electronically.

/s/ Olivia L. Weber